

PD-0108-20 and PD-0109-20

**In the
Court of Criminal Appeals of Texas
At Austin**

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COURT OF CRIMINAL APPEALS
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Appellate No. NO. 09-18-00218-CR and NO. 09-18-00219-CR

In the Court of Appeals for the Ninth District

Bradley Jacobs Shumway, Appellant

v.

The State of Texas, *Appellee*

PETITION FOR DISCRETIONARY REVIEW

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ORAL ARGUMENT REQUESTED

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TABLE OF CONTENTS

<u>IDENTITY OF THE PARTIES AND COUNSEL</u>	i,ii
<u>TABLE OF CONTENTS</u>	iii,iv
<u>INDEX OF AUTHORITIES</u>	v
<u>STATEMENT REGARDING ORAL ARGUMENT</u>	1
<u>STATEMENT OF THE CASE</u>	1,2
<u>STATEMENT OF PROCEDURAL HISTORY</u>	2
<u>QUESTIONS PRESENTED FOR REVIEW</u>	3

Shumway gave extrajudicial confessions to the crimes of indecency with a child, the Ninth Court of Appeals found the evidence to be legally sufficient when it determined that evidence independent of Shumway's confessions, "tend to corroborate Shumway's confessions and serve to make it more probable that the crimes occurred than without such evidence."

QUESTION 1

Does the corpus delicti rule require evidence totally independent of a defendant's extrajudicial confession showing that the 'essential nature' of the charged crime was committed by someone?

QUESTION 2

Can independent evidence as to time, motive, opportunity, state of mind of the defendant, and/or contextual background information satisfy the corpus delicti rule in an indecency with child charge when there is zero evidence of sexual contact?

QUESTION 3

Is the evidence legally sufficient to support convictions for indecency with a child when the independent evidence does not tend to establish sexual

contact?

QUESTION 4

Did the Ninth Court of Appeals improperly circumvent The Court of Criminal Appeals 2015 ruling on corpus delicti doctrine in *Miller v. State*, 457 S.W.3d 919 (TEX. CRIM. APP. 2015) which expressly declined to use a trustworthiness standard regarding the legal sufficiency of confessions?

ARGUMENT.....4

A. Corpus Delicti Jurisprudence.....4

B. The Court of Appeals modifies the corpus delicti rule.....5

1. Independent evidence does not corroborate the extrajudicial confessions.
2. Independent evidence must at least tend to show the essential nature of indecency with child.
3. Independent Evidence does not show Shumway made sexual contact with KJ.
4. Independent Evidence only tends to show contextual background as time, place, and opportunity.
5. Ninth Court of Appeals did not follow the corpus delicti rule.
6. The Ninth Court of Appeals backdoors a trustworthiness of confession rule.
7. *Hacker and Miller* supersede *Salazar*.

PRAYER17

CERTIFICATE OF SERVICE.....18

CERTIFICATE OF COMPLIANCE RULE 9.4.....18

APPENDIX.....19

INDEX OF AUTHORITIES

Cases

<i>Fountain v. State</i> , 401 S.W.3d 344 (Tex. App.—Houston [14th Dist.] 2013, pet. ref'd).....	7,8
<i>Gribble v. State</i> , 808 S.W.2d 65 (TEX. CRIM. APP. 1990).....	5,12
<i>Hacker v. State</i> , 389 S.W.3d 860 (TEX. CRIM. APP. 2013).....	4,13,15,17
<i>Miller v. State</i> , 457 S.W.3d 919 (TEX. CRIM. APP. 2015)....	4-5,8-10,14,15,17
<i>Salazar v. State</i> , 86 S.W.3d 640 (TEX. CRIM. APP. 2002).....	5,7,8,15-16
<i>Rocha v. State</i> , 16 S.W.3d 1 (TEX. CRIM. APP. 2000).....	7,10
<i>Turner v. State</i> , 877 S.W.2d 513 (Tex. App.—Fort Worth 1994, no pet.).....	16

Record References

Clerk's Record	(Cause # C.R. page#)
Reporter's Record	(Volume # R.R. page #)
Court of Appeals Opinion	(Opinion pg#)

STATEMENT REGARDING ORAL ARGUMENT

In the event Petitioner's Petition for Discretionary Review is granted by this Honorable Court, Petitioner requests oral argument herein for the following reason:

The decision by the Ninth Court of Appeals in effect reduces the significance of the corpus delicti corroboration requirement in favor of a lesser standard and attempts to reintroduce a trustworthiness of confession rule which guts the corpus delicti rule. This Honorable Court should resolve the conflict in Texas law the Court of Appeals' decision has created. Oral argument will assist in explaining how the corroboration requirement is modified.

STATEMENT OF THE CASE

A grand jury returned two indictments charging the Petitioner with the commission of the offenses of aggravated sexual assault of a child under six years of age and indecency with a child. (15229 C.R. 30, 12127 C.R. 8). Upon the Petitioner's pleas of not guilty, a jury found the Petitioner guilty of indecency with a child in each case, and assessed his punishment in each case at imprisonment for twenty years and payment of a \$5000 fine.

(15229C.R. 118, 12127 C.R. 78). The trial court ordered that the sentences be served consecutively. (V R.R. 158). On May 18, 2018, Petitioner gave notice of appeal. (15229 C.R 86, 12127 C.R. 136). At issue on appeal is the application of the corpus delicti rule.

STATEMENT OF PROCEDURAL HISTORY

The Ninth District Court of Appeals of Beaumont delivered its Opinion in NO. 09-18-00218-CR and NO. 09-18-00219-CR, BRADLEY JACOBS SHUMWAY, Appellant v. STATE OF TEXAS, Appellee on 8 January 2020. No Motion for Rehearing was filed.

QUESTIONS PRESENTED FOR REVIEW

Shumway gave extrajudicial confessions to the crimes of indecency with a child, the Ninth Court of Appeals found the evidence to be legally sufficient when it determined that evidence independent of Shumway's confessions, "tend to corroborate Shumway's confessions and serve to make it more probable that the crimes occurred than without such evidence."

QUESTION 1

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ARGUMENT

With respect to extrajudicial confession cases, the Ninth Court of Appeals holding now lays the foundation to back-door a trustworthiness of confession rule disguised within the framework of the Corpus Delicti rule. One hundred and sixty-six (166) years of Corpus Delicti jurisprudence may face extinction if the Court of Criminal Appeals does not intervene.

Implicit in the Ninth's holding is the expansion of what type of evidence properly "corroborates" an extrajudicial confession and the notion that the corpus delicti rule is satisfied when independent evidence falls short of tending to establish, *the corpus delicti*, or the essential nature of the crime.

A. Corpus Delicti Jurisprudence

In 2015 the Court of Criminal Appeals reaffirmed the corpus delicti rule and notes that it has been applied for more than "one-hundred-sixty-years."

Miller v. State, 457 S.W.3d 919, 927 (TEX. CRIM. APP. 2015).

The corpus delicti rule is one of evidentiary sufficiency affecting cases in which there is an extrajudicial confession. See *Hacker v. State*, 389 S.W.3d 860, 865 (TEX. CRIM. APP. 2013). The rule states that, "[w]hen the burden of proof is 'beyond a reasonable doubt,' a defendant's extrajudicial confession does not constitute legally sufficient evidence of guilt absent independent evidence of the

corpus delicti." *Id.* To satisfy the corpus delicti rule, there must be "evidence independent of a defendant's extrajudicial confession show[ing] that the 'essential nature' of the charged crime was committed by someone." *Id.* at 866; see *Salazar v. State*, 86 S.W.3d 640 (TEX. CRIM. APP. 2002).

Miller v. State, 457 S.W.3d 919, 924 (TEX. CRIM. APP. 2015) (emphasis added)

The rule has been understood to require independent evidence of the *corpus delicti*, not simply support for credibility of the confession. *Gribble v. State*, 808 S.W.2d 65, 70 (TEX. CRIM. APP. 1990). Moreover, the Gribble court stated the policy reason for the corroboration requirement:

the essential purpose of the *corroboration requirement* is to assure that no person be convicted without some independent evidence showing that the very crime to which he confessed was actually committed. *Id.* at 71.

B. The Court of Appeals modifies the corpus delicti rule

Petitioner, Bradley Shumway ("Shumway") gave two extrajudicial confessions, one to his Bishop and the other to his wife ("CS"). He confessed to inappropriate sexual contact with a child, KJ.

In Petitioner's case, the Ninth Court of Appeals intentionally disregards long standing precedent and makes an exception by trivializing the corpus

delicti corroboration requirement of independent evidence to show the “essential nature of the crime” being committed by someone.

Implied within the Ninth Court of Appeals ruling is the notion that evidence independent of an extrajudicial confession it not necessary to show the corpus delicti of indecency with child. Evidence that *corroborates* the contextual background of an extrajudicial confession which may show motive, opportunity, and post state of mind of a defendant satisfies the corpus delicti.

1. The independent evidence does not corroborate the extrajudicial confessions

The Ninth Court of Appeals claims that the independent evidence from CS “**tends to corroborate Shumway’s confessions**” and serve to make it more probable that the crimes occurred than without such evidence. (Opinion pg 15).

Summary of CS’s testimony that she remembered (Opinion pg 14-15):

1. she and Shumway watched the child complainant (KJ) while child’s parents were on a weekend anniversary trip,
2. during that time, she left KJ’s shorts off because they were too small and allowed KJ to run around in a diaper,
3. a period of time when she and her daughter were on the patio while Shumway was inside the house with KJ,

4. after the weekend Shumway fasted a lot and was somewhat withdrawn, and
5. Shumway went to speak to the Bishop.

With this evidence the Court of Appeals makes a gigantic conclusory unreasonable leap to corroboration without any explanation.

The corpus delicti or the essential elements of indecency with a child is the “**sexual touching of the child** with the intent to arouse or gratify the sexual desire of any person.” (Opinion Pg 13; See *Salazar v. State*, 86 S.W.3d 640, 645). The record is devoid of any evidence of sexually touching the child; therefore, the court incorrectly found that the evidence corroborates the extrajudicial confessions.

2. The independent evidence must at least tend to show the essential nature of indecency with child.

In its analysis Ninth Court of Appeals relies upon *Salazar v. State*, 86 S.W.3d 640,645 (TEX. CRIM. APP. 2002), *Fountain v. State*, 401 S.W.3d 344, 353 (Tex. App.—Houston [14th Dist.] 2013, pet. ref’d), and *Rocha v. State*, 16 S.W.3d 1, 4 (TEX. CRIM. APP. 2000) to support its position.

Contrary to the independent evidence in issue here, in each case relied upon by the Ninth Court, the evidence independent of the extrajudicial

confession tends to show **the 'essential nature' of the charged crime was committed by someone**. See *Miller v. State*, 457 S.W.3d 919, 924.

In *Salazar*, the defendant gave an extrajudicial confession in which he admitted to aggravated sexual assault a child by putting the child's penis in his mouth. *Salazar v. State*, 86 S.W.3d 640, 642-643. At trial other witnesses confirmed sexual contact and the defendant testified that he put his penis on the child's mouth. *Id.* at 642,645. The corpus delicti rule was satisfied by some independent evidence that someone had sexual contact with Julian's private part and that the act was performed with criminal intent. *Id.* at 645. *Salazar* actually hurts the Ninth's position because in Shumway's case there is no independent evidence of any sexual contact that was performed with criminal intent, the corpus delicti rule was not satisfied. See *Salazar v. State* at 645.

The Ninth's reliance on *Fountain* to support its finding that the independent evidence tended to establish that the offenses occurred is also flawed because in *Fountain* the independent evidence gives reason to believe the defendant caused the death of his child and this case does not give reason to believe Shumway sexually touched a child. In *Fountain* the Court of Appeals found the evidence to be legally sufficient to support the corpus delicti of felony murder. *Fountain v. State*, 401 S.W.3d 344, 353. The

evidence showed that the defendant was the last and sole caretaker for his three-year-old child at an apartment complex when the child suddenly vanished. *Id.* The neighbor and the maintenance man did not observe the defendant looking for the child, and responding police testified that he appeared unconcerned about the disappearance of his child. *Id.* The evidence demonstrated that the defendant had a history of consistently abusing the child and causing physical injuries; and he was the last known person to see the child alive. *Id.* at 355. Evidence also showed that the defendant's last known interaction with the child involved him hitting the child in anger and the child was never seen again after he stopped crying. *Id.* Cell phone location records contradict the defendant's statement that he and the child were asleep at the apartment until 9am. *Id.* at 353. The Court found the independent evidence tended to render it more probable than not that the child died by criminal means. *Id.* at 355. In this case the independent evidence indicated the 'essential nature' of the charged crime was committed by someone because the defendant historically and close in time to the child's disappearance physically abused the child, the defendant was responsible for the child at the time and the child was never found. See *Miller v. State*, 457 S.W.3d 919, 924.

In *Rocha*, the Court of Criminal Appeals, while referring to independent evidence, stated that "all that is required is that there be some evidence which renders the commission of the offense more probable than it would be without the evidence." *Rocha v. State*, 16 S.W.3d 1, 4. The defendant was charged with capital murder, The Court of Criminal Appeals held that the corpus delicti requirement extends to both the murder and the underlying offense, in this case robbery. *Id.* at 2,5. The independent evidence indicated that a security guard's gun was stolen during a physical attack and the attack resulted in a murder because one witness testified that the guard was confronted by two men who demanded and reached for his gun and that a shooting subsequently occurred; and a second witness confirmed that shortly after the shooting the guard had been shot and that his gun was missing. *Id.* at 5. The evidence established that the 'essential nature' of the charged crime was committed by someone because witness testimony tends to show that that that security guard's gun was taken, and he was shot and killed. See *Miller v. State*, 457 S.W.3d 919, 924.

The Court of Appeals' cited cases are in line with *Miller v. State's* essential core that the independent evidence alone must show the essential nature of the charged crime, but the Court failed to apply the proper standard and must be reversed.

3. Independent Evidence does not show Shumway made sexual contact with KJ

CS's testimony, as referenced by the Ninth, does not at all tend to show a sexual touching of a child with an intent to gratify sexual desire. CS did not witness Shumway touch KJ and clearly did not observe any facts which would tend to show a sexual touching.

4. Independent Evidence only tends to show contextual background as time, place, and opportunity

At most CS's referenced testimony tends to show that KJ was in Shumway's presence for a weekend and that he may have been alone with KJ while she was wearing only a diaper. Shumway's post weekend fasting and being withdrawn is not an act upon KJ the child and indicates nothing without some evidence of sexual contact by Shumway. This type evidence may show time, place, opportunity, and the parties but it does not tend to indicate a criminal act by Shumway.

Additionally, the Court of Appeals points out other inconsequential testimony from the Bishop and KJ's mother without any further explanation. The referenced evidence only establishes that Shumway visited with his Bishop in September of 2016, and that KJ was left with the Shumway's in August of 2016. (Opinion Pg 15). Once again, the evidence only gives

contextual background to the timing of Shumway's confession and that he may have had time and an opportunity with KJ. Even if considered with CS's referenced testimony these facts do not tend to show Shumway making physical contact with KJ let alone a sexual contact. It simply shows Shumway may have been alone with KJ and that he may be religious and seeking counsel from his religious leader. The Court of Appeals does not reference any evidence which tends to confirm any part of the corpus delicti, the referenced evidence does not make the crime of indecency with a child more likely to have occurred than without such evidence because the independent evidence under any reasonable interpretation fails to show the essential nature of the crime, a sexual contact.

5. Ninth Court of Appeals did not follow the corpus delicti rule

The error is the Ninth Court of Appeal's failure to adhere to the corpus delicti rule requiring that the independent evidence corroborate the corpus delicti from the extrajudicial confession before finding the evidence legally sufficient to convict. See *Gribble v. State*, 808 S.W.2d 65, 70 (TEX. CRIM. APP. 1990). The Ninth incorrectly held that the corpus delicti rule was satisfied here because the independent evidence does not corroborate the corpus delicti of the confessed crime of indecency with a child in other words

the independent evidence does not tend to show the essential nature of indecency with child, specifically it does not show a sexual contact.

6. The Ninth Court of Appeals backdoors a trustworthiness of confession rule

The Ninth Court of Appeals disguises its intent to loosen up the corpus delicti rule under the cover that independent evidence “corroborates” Shumway’s confession. There is no explanation. No clarification on how this independent evidence makes the crime more probable than not. A closer examination identifies that the so-called corroborating testimony only tends to add some credibility and trustworthiness to Shumway’s extrajudicial confessions by matching contextual background facts of time, place, opportunity and his post state of mind.

The Court of Criminal Appeals has already disavowed this type of evidence as corroborative of a crime and a recent attempt to circumvent the corpus delicti rule by finding that the extrajudicial confessions are trustworthy.

Evidence showing motive, intent, opportunity, and the state of mind of a defendant are not probative evidence absent evidence that conduct occurred that could tend show sexual contact of an indecency with child. See *Hacker v. State*, 389 S.W.3d 860, 873. This typed evidence is unimportant

if the prohibited conduct has not been established. *Id.* They are not even some evidence that a crime has occurred by someone. *Id.* at 871. The Ninth Court of Appeals references no evidence that tends to establish the indecency with child by itself. *See Id.* at 870. Without that, any evidence of the state mind of Shumway or his motive, intent, or opportunity to engage in an indecency with a child or sexual contact with a child is not independent evidence that he actually did so. *See Id.* at 871.

Most noteworthy, the Ninth Court of Appeals was aware of the 2015 case in *Miller v. State* in which the Court of Criminal Appeals declined to modify the corpus delicti rule with a trustworthiness rule, but nonetheless attempts to force a trustworthiness of confession rule in the name of corroborating evidence of the corpus delicti. (Opinion pg 12)

In *Miller v. State*, 457 S.W.3d 919,920-923. The Court of Criminal Appeals granted petition for review to not only to decide whether the corpus delicti rule was satisfied but also to determine whether the rule needed to be reformulated to remove the corroboration requirement in extrajudicial confession cases and focus on the defendant's confession and its trustworthiness, see below:

(2) If the corpus delicti rule is retained, should it be reformulated to focus on the defendant's confession

and consider whether there is substantial independent evidence which would tend to establish its trustworthiness? (RR 6 at State's Exhs. 2, 3, 7, 8). See *Miller*, No. 02-12-00487-CR, slip op. at 5-7. *Id.* at 922.

The Court answered yes to retain the corpus delicti rule and no to a reformulation, and expressly stated “that the corpus delicti rule should not be abolished or replaced with a trustworthiness standard.” *Id.* at 926. It reaffirmed the important function of the rule and its application in Texas jurisprudence for more than 160 years. *Id.* at 927.

Court of Criminal Appeals precedent dictates that independent evidence must corroborate Shumway’s extrajudicial confession, as applied here, CS’s testimony must corroborate Shumway’s extrajudicial confession, it must at the very least tend to show some of the corpus delicti of an indecency with a child itself, sexual contact with criminal intent. See *Miller v. State*, 457 S.W.3d 919, 924; *Hacker v. State*, 389 S.W.3d 860, 866; *Salazar v. State*, 86 S.W.3d 640.

Examination of the independent evidence here clearly shows the Court of Appeals did not follow corpus delicti precedent because the court found the evidence legally sufficient despite zero evidence regarding the essential

nature of an indecency with a child charge. The extrajudicial confession was not corroborated by evidence of a sexual contact.

This Honorable Court of Appeals should grant review in Shumway's case because the Ninth Court of Appeals ignored corpus delicti precedent and then tried to back door a rule previously reviewed and denied. Failure to grant review will embolden other Courts of Appeals which may eventually lead to the elimination of the corpus delicti rule altogether.

7. *Hacker and Miller* supersedes *Salazar*

The Ninth concludes that “some evidence exists outside of the extrajudicial confession which, considered alone or in connection with the confession, shows that the crime actually occurred.” *Salazar*, 86 S.W.3d at 645. In addition, the Ninth cites *Turner v. State*, 877 S.W.2d 513 (Tex. App.—Fort Worth 1994, no pet.) to support this position. In *Turner*, the Fort Worth Court of Appeals stated that, “proof of the corpus delicti need not be made independent of an extrajudicial admission. If there is some evidence corroborating the admission, the admission may be used to aid in the establishment of the corpus delicti.” *Id.* at 515.

Salazar (2002) and the *Turner* (1994) case from the Court of Appeals give the impression that the independent evidence does not need to at least

tend show that the crime occurred on its own, a direct contradiction to more recent cases from the Court of Criminal Appeals.

Hacker v. State, 389 S.W.3d 860 (TEX. CRIM. APP. 2013) and *Miller v. State*, 457 S.W.3d 919 (TEX. CRIM. APP. 2015) supersede *Salazar* and *Turner* as they are more recent decisions by the Court of Criminal Appeals. The independent evidence must show the essential nature of the crime was committed by someone. *Miller v. State*, 457 S.W.3d 919, 924; *Hacker v. State*, 389 S.W.3d 860, 866.

The Court of Criminal Appeals should grant review to clarify the corpus delicti rule and emphasize the significance of evidence independent of the extrajudicial confession to keeping the corpus delicti together.

PRAYER

Appellant respectfully requests the Honorable Court of Criminal Appeals to grant Petition for Discretionary Review with Oral Argument.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and complete copy of Appellant's Petition for Discretionary Review was served on the 7th day of April 2020.

Via Efile service to The Montgomery County District Attorney's Office, Bill Delmore.

Via Efile service to Ms. Stacey M. Soule, State's Prosecuting Attorney.

/s/ Richard Martin P. Canlas
Richard Martin P. Canlas
Lawyer for Appellant

CERTIFICATE OF COMPLIANCE WITH RULE 9.4

I hereby certify that this document complies with the requirements of Rule 9.4(i)(2)(B) of the Texas Rules of Appellate Procedure because there are 3,502 words in this document, excluding those portions of the document excepted from the word count rule under Rule 9.4(i)(1), as calculated by the word processing program used to prepare it.

/s/ Richard Martin P. Canlas
Richard Martin P. Canlas
Lawyer for Petitioner

APPENDIX

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-18-00218-CR
NO. 09-18-00219-CR

BRADLEY JACOBS SHUMWAY, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 435th District Court
Montgomery County, Texas
Trial Cause Nos. 17-10-12127-CR & 17-12-15229-CR

MEMORANDUM OPINION

A jury found Bradley Jacobs Shumway guilty of indecency with a child in trial cause number 17-10-12127-CR and guilty of indecency with a child in trial cause number 17-12-15229-CR. Shumway elected for the trial court to assess punishment. In each case, the trial court sentenced Shumway to twenty years of confinement with a \$5,000 fine and ordered the sentences to run consecutively. In

one appellate issue in each case, Shumway argues that there was insufficient evidence of the *corpus delicti* of indecency with a child. We affirm.

Indictments

In cause number 17-10-12127-CR, a grand jury indictment alleged that Shumway

on or about August 4, 2016, and before the presentment of this indictment, . . . did then and there intentionally or knowingly cause the defendant's sexual organ to contact or penetrate the sexual organ of K.J.,^[1] a child who was then and there younger than 6 years of age[.]

See Tex. Penal Code Ann. § 22.021(a)(1)(B). In cause number 17-12-15229-CR, a grand jury indictment alleged that Shumway

on or about August 04, 2016, and before the presentment of this indictment, . . . did then and there, with intent to arouse and gratify the sexual desire of the defendant, engage in sexual contact by touching the genitals of K.J., a child younger than 17 years of age, with the defendant's hand or finger[.]

See Tex. Penal Code Ann. § 21.11(a)(1).

Background

Sergeant Jody Armstrong, an investigator with the Montgomery County Sheriff's Office, testified that she first became involved in this case upon receiving

¹ We refer to the victim, family members, and certain other individuals with initials. *See* Tex. Const. art. I, § 30 (granting crime victims "the right to be treated with fairness and with respect for the victim's dignity and privacy throughout the criminal justice process").

information from CPS on September 29, 2016 of an assault. According to Sergeant Armstrong, CPS reported that Shumway allegedly sexually assaulted K.J., a child “[j]ust under 18 months [old,]” in Montgomery County.

Sergeant Armstrong testified that she went to K.J.’s home to meet with the victim’s family and collect information. According to Armstrong, K.J.’s parents told her they knew Shumway and they identified Shumway as the perpetrator from a photograph Sergeant Armstrong showed them. At trial, Sergeant Armstrong identified the defendant as the man in the photograph that K.J.’s parents identified as Shumway. Sergeant Armstrong testified that as part of her investigation, she obtained statements from K.J.’s parents and Bishop Thad Jenks. Sergeant Armstrong attempted to talk to Shumway’s wife but was unable to obtain a statement from her. Sergeant Armstrong explained that there was no forensic interview done on K.J. because, due to her age, she was non-verbal and did not meet the age requirement for the Safe Harbor interview, which is typically three years old or older. Sergeant Armstrong testified that she collected the SANE (Sexual Assault Nurse Examiner) exam reports for K.J. and her three-year-old brother, T.J., that both children had been at Shumway’s house on the date of the alleged offenses, and that Armstrong was able to confirm that Shumway had access to K.J. during the time period when the alleged offenses took place. According to Sergeant Armstrong, when she scheduled

K.J.'s SANE exam she did not expect the exam would show an injury because of "[t]he time that had passed." As part of her investigation, Sergeant Armstrong also obtained records from the pediatrician K.J. saw after the alleged offenses but prior to the SANE exam. Sergeant Armstrong testified that after reviewing the case with the District Attorney's office, she completed a probable cause statement and filed for a warrant for Shumway for aggravated sexual assault of a child.

Thad Jenks, an attorney and a volunteer bishop, testified that as a volunteer bishop he is "responsible for the spiritual and temporal welfare of the members of [his] congregation[]" in the church in his ward or geographic area and "help[s] those who confess and are wanting spiritual advice to go through the repentance process . . . and obtain forgiveness and become better people." Jenks testified that in September 2016 Shumway "made it clear to [Jenks] that [Shumway] needed to make a confession[.]" According to Jenks, Shumway met with Jenks in his office at the church and told Jenks that he had improper contact with a child that Jenks believed to be a little bit more than a year old:

He told me that he and his wife were watching some -- the children of some family friends, that they were there for the weekend. While they were there he took the young daughter into his bedroom and moved aside her -- pulled down a little bit her diaper and touched her in her genital region with his hands, with his tongue, and with his penis.

Jenks testified that the child's parents had gone to church in his ward and that he and the parents "were friends and fellow members of the ward." Jenks testified that this information fell into a category that kept Jenks from "keeping things confidential." According to Jenks, a detective contacted him and he provided the information that he was required to disclose in a statement to the detective. Jenks met with K.J.'s parents and told them about what Shumway reported to him and that Shumway told him he contacted the child's skin. At trial, Jenks denied telling the parents that Shumway told him the contact was over the child's diaper and not contact with the child's skin.

C.S., Shumway's wife, testified that she had been married to Shumway for twenty-four years and had filed for divorce. She testified that she and Shumway were friends with K.J.'s parents, that she had babysat their son "many times[,] and she had babysat K.J. "just a couple of times." According to C.S., the last time she watched T.J. and K.J. overnight was in early August 2016, when the children's parents went out of town. C.S. testified that she recalled that during that weekend K.J. walked around in a diaper, and C.S. did not put K.J.'s shorts on because "the shorts were very tight and too small and constrictive." C.S. testified that after that weekend, Shumway "was fasting a lot and somewhat withdrawn; but sometimes this had occurred before, but it seemed a little more than usual." C.S. also testified that

she remembers Shumway leaving to meet with the bishop prior to Shumway telling her what he did to K.J.

C.S. testified that around the end of September 2016, Shumway told C.S. that he had talked to the bishop and that Shumway needed to talk to her about something that had happened while they were watching K.J. and T.J. According to C.S., Shumway told her that while she was on the back patio talking to the Shumways' daughter, he placed K.J. on their bed and touched K.J.'s genitals with his hand, his mouth, and his penis.

C.S. testified that she clearly recalled sitting on the patio with her daughter for more than a fifteen-to-twenty-minute time period that weekend and that Shumway and K.J. were inside. C.S. testified that Shumway told her that he had touched K.J. because he "was curious whether it would give him an erection or not." C.S. testified that when he went into detail about his contact with K.J.'s vagina with his hand, "[h]e described it like he was reaching underneath and using one of his fingers there, and he couldn't recall whether -- how far it went in. And then that's when he stopped." According to C.S., Shumway told her two different versions of why his contact with K.J. stopped. One version was that he was interrupted by the foul smell of K.J.'s diaper, and the other one was that he realized he was "doing something very wrong, and he kind of woke up to the reality that it could get him in a lot of

trouble[.]” C.S. testified that later Shumway told her that he “felt sexually neglected and also emotionally neglected” and that these feelings along with strange thoughts and temptations led up to what he did to K.J. According to C.S., Shumway also told her that he had unwanted thoughts that weekend and that C.S. was “irresponsible to not put the shorts back on [K.J.] after changing her diaper.”

Jamie Ferrell, clinical director of forensic nursing services for the Memorial Hermann Healthcare System, testified that she treated K.J. at Children’s Safe Harbor. According to her records admitted at trial, K.J.’s mother, L.J., consented for Ferrell to treat K.J. on October 6, 2016. Ferrell testified that because K.J. was pre-verbal, Ferrell asked L.J. the reason for the visit. Referring to her records, Ferrell testified that L.J. reported the following:

We left our kids with friends that we have known for three to four years from church. Then Brother Shumway, he told his Bishop what he had done, and then we were told. Brother Shumway said he was going to change [K.J.]’s diaper and he touched her over the diaper with his tongue and hands and penis, but it was done all over the diaper.

Ferrell testified that no evidence was collected because the alleged offenses would have occurred greater than ninety-six hours before K.J. arrived for the exam and “evidence collection and the swabbing on a patient is only done within 96 hours.” According to Ferrell, her examination noted that there were no body surface injuries to K.J. In examining K.J.’s genitalia and anus, Ferrell also noted no evidence of

injury. Ferrell testified that based on the history provided by the parent, she would not anticipate having found any injury to K.J. because “touching to the area, rubbing to the area, that’s not any different than really if you’re cleaning your child in this area[,]” and even if there had been penetrating trauma, she would not expect there to be injury because that part of the body “heals very, very fast.” According to Ferrell, after that length of time it is “incredibly rare[.]” to find any injury in that area when doing these exams on children.

L.J., K.J.’s mother, testified that she has known C.S. and Shumway for five years and that they were friends and attend the same church. L.J. explained that prior to her placing T.J. in daycare, C.S. often watched T.J. while L.J. worked and L.J.’s husband traveled. L.J. testified that the Shumways watched T.J. and K.J. at the Shumways’ house while L.J. and her husband went on an anniversary trip August 4 through 6, 2016. According to L.J., in September 2016 she and her husband were called to a meeting in their bishop’s office and Bishop Thad Jenks and Bishop Kirkin talked to them. L.J. testified that when they called the meeting, she and her husband did not have any indication regarding the purpose of the meeting. L.J. testified that, after she learned in September 2016 what happened between the defendant and K.J., she was “very surprised . . . overwhelmed[,] [and] felt like . . . a victim, also.” L.J. explained that they booked an appointment two or three days after the meeting with

K.J.'s pediatrician for K.J. to be examined for injuries and sexually transmitted diseases. The pediatrician's records admitted at trial indicate that K.J. was seen on September 28, 2016, when she was eighteen months old, that the pediatrician found no physical injuries, and that the results from the STD testing were negative. L.J. testified that subsequently Jody Armstrong met with them to confirm Shumway's identity and asked that they take K.J. and T.J. for an exam at Children's Safe Harbor. L.J. recalled telling the SANE nurse that there was contact with K.J.'s vagina and it was skin-to-skin contact. According to L.J., they got their information about what happened to K.J. from Thad Jenks and not Shumway directly. L.J. testified at the time of the incident K.J. could only speak "20 or 30 words[,] . . . pointed a lot to what she needed[,]” and now at the age of three has never said anything about what happened to her.

At the close of the State's evidence, the defense moved for a directed verdict based on the *corpus delicti* doctrine. The trial court denied the motion and denied Shumway's request for an instruction in the jury charge on the *corpus delicti* doctrine. The defense called no witnesses and rested. In cause number 17-10-12127-CR, although the grand jury indicted Shumway for aggravated sexual assault of a child, the jury found Shumway guilty of the lesser-included offense of indecency with a child. In cause number 17-12-15229-CR, the jury found Shumway guilty of

indecent with a child. After a hearing on punishment,² in each case the trial court sentenced Shumway to twenty years of confinement with a \$5,000 fine and ordered the sentences to run consecutively. Shumway timely appealed.

Issue on Appeal

In his sole appellate issue in both appellate causes, Shumway argues that there is insufficient evidence of the *corpus delicti* of the crimes of indecent with a child because his extrajudicial confessions to his bishop and his wife are not legally sufficient evidence of guilt absent independent evidence that a crime was committed by someone. According to Shumway, his confessions were not corroborated by evidence that anyone touched K.J.'s genitals with their hand or genitals, there was

² The defendant elected to have the trial judge assess punishment. During the punishment hearing, C.S. testified that throughout their marriage the defendant made other confessions to her about other things he had done. C.S. recalled that many years ago when they lived in another state, the defendant had confessed to her about an incident with another infant that had occurred in 1994 or 1995. During that time, she was babysitting A.H., a child between the ages of eight months and fourteen months. C.S. testified that some months after she had cared for A.H. in their home, Shumway confessed to her that he had molested A.H. C.S. testified that on another occasion Shumway confessed to her that he entered a tenant's apartment with a key because he did general maintenance for the tenant, and without the tenant's permission he purposefully walked into the tenant's bathroom while the tenant was showering. C.S. testified that Shumway also had confessed to her that, while her sister was visiting, he looked underneath the door using a mirror to watch her sister get into the shower, and that Shumway confessed that he had placed a hole in the vent in front of the bathroom vanity in their trailer so that he could see up the vent with the intention of seeing their teenage daughter when she was getting ready to shower.

no outcry from the child or physical evidence of contact, and no one witnessed Shumway commit the offenses of indecency with a child.

Standard of Review and Applicable Law

We review the sufficiency of the evidence to support a conviction under the standard set forth in *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *see Brooks v. State*, 323 S.W.3d 893, 895 (Tex. Crim. App. 2010). Under that standard, we view all the evidence in a light most favorable to the verdict and determine, based on that evidence and any reasonable inferences therefrom, whether any rational factfinder could have found the essential elements of the offense beyond a reasonable doubt. *See Temple v. State*, 390 S.W.3d 341, 360 (Tex. Crim. App. 2013) (citing *Jackson*, 443 U.S. at 318-19). The jury is the sole judge of the credibility and weight to be attached to the testimony of the witnesses. *Id.* In this role, the jury may choose to believe all, some, or none of the testimony presented by the parties. *Chambers v. State*, 805 S.W.2d 459, 461 (Tex. Crim. App. 1991). Further, the jury is permitted to draw multiple reasonable inferences from facts as long as each is supported by the evidence presented at trial. *Temple*, 390 S.W.3d at 360. When the record supports conflicting inferences, we presume that the jury resolved those conflicts in favor of the verdict and therefore defer to that determination. *Id.* Direct and circumstantial evidence are equally probative of an actor's guilt, and "circumstantial evidence

alone can be sufficient to establish guilt.” *Temple*, 390 S.W.3d at 359 (quoting *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007)).

The “*corpus delicti* rule is a common law, judicially created, doctrine—the purpose of which was to ensure that a person would not be convicted based solely on his own false confession to a crime that never occurred.” *Carrizales v. State*, 414 S.W.3d 737, 740 (Tex. Crim. App. 2013). Under the *corpus delicti* doctrine, a defendant’s extrajudicial confession does not constitute legally sufficient evidence of guilt absent independent evidence of the *corpus delicti*.³ *Miller v. State*, 457 S.W.3d 919, 924 (Tex. Crim. App. 2015). The *corpus delicti* of any criminal offense is that the offense in question has been committed by someone. *Fisher v. State*, 851 S.W.2d 298, 303 (Tex. Crim. App. 1993).

To satisfy this rule, there must be “evidence independent of a defendant’s extrajudicial confession show[ing] that the ‘essential nature’ of the charged crime was committed by someone.” *Hacker v. State*, 389 S.W.3d 860, 866 (Tex. Crim. App. 2013). The other evidence need not be sufficient by itself to prove the offense; rather, “all that is required is that there be some evidence which renders the commission of the offense more probable than it would be without the evidence.”

³ “*Corpus delicti*” is Latin for “body of the crime[,]” and is defined as “[t]he fact of a transgression” or “the material substance on which a crime has been committed.” *Corpus delicti*, Black’s Law Dictionary (8th ed. 2004).

Rocha v. State, 16 S.W.3d 1, 4 (Tex. Crim. App. 2000) (quoting *Williams v. State*, 958 S.W.2d 186, 190 (Tex. Crim. App. 1997)). The rule is satisfied “if some evidence exists outside of the extra-judicial confession which, considered alone or in connection with the confession, shows that the crime actually occurred.” *Salazar v. State*, 86 S.W.3d 640, 645 (Tex. Crim. App. 2002); *see also Turner v. State*, 877 S.W.2d 513, 515 (Tex. App.—Fort Worth 1994, no pet.) (“If there is some evidence corroborating the admission, the admission may be used to aid in the establishment of the corpus delicti.”). The *corpus delicti* of indecency with a child is the occurrence of a sexual touching of the child with the intent to arouse or gratify the sexual desire of any person. *Gonzales v. State*, 4 S.W.3d 406, 412-13 (Tex. App.—Waco 1999, no pet.) (quoting Tex. Penal Code Ann. §§ 21.01(2), 21.11(a)(1)).

So long as there is independent evidence to render the *corpus delicti* of a crime ““more probable than it would be without the evidence,”” the essential purposes of the doctrine have been satisfied. *Julian v. State*, 492 S.W.3d 462, 468 (Tex. App.—Houston [14th Dist.] 2016, no pet.) (quoting *Gribble v. State*, 808 S.W.2d 65, 71-72 (Tex. Crim. App. 1990) (plurality op.)); *see also Rocha*, 16 S.W.3d at 4. The quantum of evidence required is not great. *Gribble*, 808 S.W.2d at 71-72. We consider all the record evidence—other than appellant’s extrajudicial confession—in the light most favorable to the jury’s verdict to determine whether that evidence

tended to establish that an offense occurred. *Fountain v. State*, 401 S.W.3d 344, 353 (Tex. App.—Houston [14th Dist.] 2013, pet. ref’d) (citing *Fisher*, 851 S.W.2d at 303). The State may prove the *corpus delicti* by circumstantial evidence. *See id.*

Analysis

Viewing all the evidence in the record in a light most favorable to the jury’s verdict, we conclude that “some evidence exists outside of the extra-judicial confession which, considered alone or in connection with the confession, shows that the crime actually occurred.” *Salazar*, 86 S.W.3d at 645. The evidence tended to establish that the offenses occurred. *See Fountain*, 401 S.W.3d at 353 (citing *Fisher*, 851 S.W.2d at 302-03).

The jury heard testimony from C.S. and the bishop, as well as the parent of the victim, that was independent from Shumway’s extrajudicial confessions that render the commission of the offense more probable than without such evidence. *See Rocha*, 16 S.W.3d at 4; *see also Salazar*, 86 S.W.3d at 645.

C.S.’s testimony that she and Shumway had watched their friends’ children, K.J. and T.J., while the friends were on a weekend anniversary trip in August 2016, that during that weekend she left K.J.’s shorts off and allowed K.J. to run around the house in her diaper because the shorts were too small, that C.S. recalled being on the patio with her daughter that weekend while Shumway was with K.J. inside the house,

that after that weekend Shumway fasted a lot and was somewhat withdrawn, and that she remembered Shumway going to speak with the bishop in September 2016, would tend to corroborate Shumway's confessions and serve to make it more probable that the crimes occurred than without such evidence.

Additionally, Jenks testified that as a volunteer bishop he is "responsible for the spiritual and temporal welfare of the members of [his] congregation[]" in the church in his ward or geographic area and "help[s] those who confess and are wanting spiritual advice to go through the repentance process . . . and obtain forgiveness and become better people." And, he testified that Shumway contacted him in September 2016 to meet with him. Further, L.J., the mother of the victim testified that she left her two children with the Shumways in August 2016, that she was friends with the Shumways, that they attended the same church, and that she first learned of what had happened when their bishop told them what the defendant said happened. We find the evidence was legally sufficient, and we overrule Shumway's issue in each case and affirm the trial court's judgments.

AFFIRMED.

LEANNE JOHNSON
Justice

Submitted on September 25, 2019
Opinion Delivered January 8, 2020
Do Not Publish

Before McKeithen, C.J., Horton and Johnson, JJ.

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